

Agency agreements authorize wholesalers whose products are sold by numerous distributors in Illinois to assume responsibility for reporting and paying tax on behalf of such distributors. See 86 Ill. Adm. Code 130.550. (This is a GIL.)

January 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 3, 2002 and our subsequent telephone conversations. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

In your letter you have stated and made inquiry as follows:

Pursuant to our telephone conversation, we represent AAA, a direct marketer of personal care and health products. Currently, AAA is registered in Illinois for sales and use tax purposes. AAA primarily sells its products to independent distributors for the distributor's own consumption. However, these distributors also resell AAA products directly to end-users located in your state. The ratio of distributor's consumption sales versus sales for resale is about 80/20. AAA has collected and remitted sales tax on the retail-selling price on all independent distributors' sales in Illinois throughout the duration of its registration with the state.

AAA is interested in accomplishing the following:

1. Clarifying the terms and conditions under which it will collect and remit sales tax to the Department of Taxation on behalf of its independent distributors residing within Illinois.
2. Reclassifying AAA as a collection agent for all of its Illinois distributors for sales and use tax purposes.

AAA proposes to enter into an agreement with your state for purposes of voluntarily collecting and remitting sales or use tax on behalf of the company's participating in-state distributors. Even though a minority amount of AAA's sales to its distributors are sales for resale, AAA still believes that centrally collecting and remitting tax to your state, on behalf of its distributors, will substantially ease the state's administrative burden. The purpose of this letter is to explore the terms of an agreement whereby the company will act as a tax collection agent on behalf of distributors located in your state.

I look forward to your response to this proposal. Enclosed is an initial draft of a Voluntary Sales and Use Tax Compliance Agreement for your review. If you have any questions or wish to discuss this proposal further please do not hesitate to call me.

## DEPARTMENT'S RESPONSE

Enclosed please find a copy of Section 130.550, "Filing of Returns for Retailers by Suppliers Under Certain Circumstances." This regulation sets out the Department's policy governing agency agreements. With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. However, if distributors who are affected make written objection to the Department, such distributors may opt out of the agreement and remit their own taxes. The Department utilizes a standard "Agency Agreement" with wholesalers and manufacturers that wish to enter into such arrangements. We have enclosed a copy for your information.

Under an agency agreement, a manufacturer or wholesaler remits tax on its sales to distributors, based upon the suggested retail price of the items sold by its distributors. Distributors participating in this type of arrangement are not required to register with the Department, file returns or remit tax because those obligations are assumed by the manufacturer or wholesaler. Consequently, when wholesalers or manufacturers enter into agency agreements with the Department, they become retailers subject to Retailers' Occupation Tax, and are the entities to which the Department will look for payment of the tax.

We have reviewed the "Voluntary Sales and Use Collection Agreement" attached to your letter and are unable to consent to use of this agreement in lieu of the Department's standard Agency Agreement. The following paragraphs provide examples of concerns raised by our review of your "Voluntary Sales and Use Collection Agreement." We hope that the following comments will be helpful to you.

The provisions of the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. ("Act"), govern the application and collection of tax in Illinois. Any agreements made with the Department must be made in accordance with the Act's provisions. The Section entitled, "Filing" (Section 1b.) notes that the Corporation will act as a tax collection agent for independent distributors. When an agency agreement is entered into with the Department, the Corporation is considered a retailer subject to tax, rather than a tax collection agent. When a wholesaler enters into an agency agreement, a distributor participating in the arrangement must either fully participate, or opt out. He cannot, as provided in Section 1g, sometimes provide resale certificates to the wholesaler and report his own tax to the Department, and at other times rely upon the wholesaler to report his sales.

We note that Section 1d of the agreement speaks of discounts and rebates. We urge you to review the Department's policies governing these items, which are discussed at 86 Ill. Adm. Code 130.2125. Gross receipts, defined at Section 130.401, includes all consideration received by the seller from all sources, and generally includes rebates. We note that Section 1e governs the determination of tax rates. Section 270.115 of the Department's regulations governs the application of local taxes (although in the context of the Home Rule Municipal Retailers' Occupation Tax, this regulation has application to other local taxes, as well). As you will note from this regulation, it is the Department's opinion that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. Consequently, if a purchase order is accepted in a local jurisdiction that has imposed a tax, the tax rate in effect at that jurisdiction will be applied.

Section 1h of the agreement governs the application of sales tax on promotional materials. Agency agreements entered into by the Department only govern the collection of tax by wholesalers, not the tax liability attached to particular types of transactions. We cannot ascertain from the limited information provided what type of liability would be incurred and by whom it might be incurred. We would be happy provide additional information on liability for these situations if additional information provided as part of a request for a General Information Letter or Private Letter Ruling.

The provisions of Section 2f of your agreement govern bad debts and uncollectible accounts. Enclosed you will find a copy of Section 130.1960, which sets out the Department's policies governing bad debt deductions. Similarly, you will find enclosed a copy of Section 130.415, which governs shipping and handling charges. Any shipping and handling charges applicable to sales made by the distributors (for whom the wholesaler is remitting tax) would be governed by these provisions.

We note that your agreement appears to contain provisions governing sales made by the wholesaler to its own customers, as well as sales made by distributors to their customers. Please note that an agency agreement does not govern the former type of sales. The agency agreement governs the manner in which wholesalers will report and remit taxes on sales made by its numerous distributors. Generally, distributors will incur Retailers' Occupation Tax liability, including applicable local taxes, while remote sellers with nexus who accept and fill purchase orders outside the state would incur a Use Tax liability on sales to Illinois customers.

I hope that this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Jerilynn Troxell Gorden  
Sr. Counsel, Sales & Excise Tax